HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

W.P.No.26199 of 1997

18-04-2007

Between:

N.S.S.Rajkumar

… Petitioner

and

The Additional Industrial Tribunal-cum-
Additional Labour Court,
Chandravihar, Nampally,
Hyderabad and others

… Respondents

Counsel for the petitioner : Sri J.Seshagiri Rao

Counsel for respondents No.2 to 5 : Sri V.S.K.Rama Rao
for Sri V.T.M.Prasad,
S.C. for A.P.S.R.T.C.

ORDER:

This writ petition is filed questioning the award of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, in I.D.No.108 of 1995 dated 16-10-1996 whereby the first respondent Tribunal while directing the reinstatement of the petitioner into service with continuity of service, directed forfeiture of three annual increments of the petitioner and to treat the period from the date of his removal till his reinstatement as not on duty without any back wages.

The petitioner was conductor working with Andhra Pradesh State Road Transport Corporation. On 08-5-1993 when the petitioner was conducting the bus on route No.8 from Secunderabad station to Charminar stage, there was a check. A charge memo was issued along with the report of the Assistant Station Manager, Ranigunj, Secunderabad, to the petitioner stating that he has not maintained the SR and that issuance of tickets was not proper, apart from excess cash having been found in the conductor's cash bag. The petitioner submitted his explanation to the charge memo wherein he denied all the allegations. The petitioner has taken the plea in his explanation that there was no check on 08-5-1993 at all and that false allegations were made against the petitioner in order to harass him. The petitioner was placed under suspension pending enquiry on 23-6-1993 and a charge-sheet containing as many as 31 charges was issued. Not being satisfied with the explanation dated 06-9-1993 offered by the petitioner, the second respondent later appointed Assistant Manager as Enquiry Officer to conduct an enquiry into the charges levelled against him. The Enquiry Officer after the enquiry submitted his report dated 16-11-1993 and after considering the enquiry report, respondent No.2 passed order on 11-2-1994 removing the petitioner from service

as conductor. On the appeals filed by the petitioner, respondent Nos.3 and 4 confirmed the order of respondent No.2. The petitioner then approached the first respondent Tribunal by way of I.D.No.108 of 1995, which was disposed of by it on the lines aforementioned.

Heard Sri J.Seshagiri Rao, learned counsel appearing for the petitioner and Sri V.S.K.Rama Rao, learned counsel representing Sri V.T.M.Prasad, standing counsel for the respondent Corporation.

Sri Seshagiri Rao submitted that the Tribunal committed a serious error in modifying the punishment of removal into one of forfeiture of three annual increments with cumulative effect in future and directing not to treat the period between the date of removal and the date of reinstatement as not on duty and also in denying back wages to the petitioner having recorded a categorical finding that the management of the Corporation acted hastily in removing the petitioner from service without waiting for the reply to the show cause notice dated 25-1-1994. He therefore submits that the award to this extent is liable to be set aside and the petitioner is not liable for any punishment.

Sri V.S.K.Rama Rao, learned counsel appearing for the respondent Corporation sought to support the award of Labour Court by stating that it has exercised the discretion vested in it by Section 11-A of the Industrial Disputes Act, 1947 and therefore this Court exercising its jurisdiction under Article 226 of the Constitution of India would not interfere with the discretion so exercised.

The first respondent Tribunal considered the entire evidence on record. One of the main contentions of the petitioner was that the petitioner was not served with the show cause notice by the time final order was passed removing the petitioner from service. With reference to this contention, the Labour Court in para-7 of its award observed as under:

" It is also clear from the record that the show cause notice was not served on the petitioner before passing of the final orders and it is held by this Court that the signature of the petitioner was forged on Ex.M-33 cover as revealed from the orders passed with regard to the validity of the domestic enquiry on 6-7-1996. It is apparently clear that the management has not waited for the explanation of the petitioner to the show cause notice issued against him before passing the orders of removal."

The Labour Court also went into the entire evidence on record and recorded its finding, which it is apposite to extract hereinbelow:

"12. It is also found in the evidence of Sri Hanumanth Rao, Asst. Manager (T) on whose report several charges were framed, who had clearly admitted that he has not rendered all the numbers in the S.R. inasmuch as the alterations are not genuine and no remarks were made to that effect, while scrutinising the S.R. as per the S.R. owing to that only the alterations in the S.R. were found. Furthermore, it is in the evidence of Sri R.V.Rao, he has not counted the ticket blocks of the ticket tray on 8-5-93; to find out several irregularities committed by the petitioner.

13. It is the contention of the petitioner that witness statements at the time of surprise check are very much essential to bring home the irregularities committed by the conductor much less. A serious charge like that of keeping the sold out tickets loosely in the conductor's tray. It is also contended by him if there are any variations in closing the number of the tickets, it is not possible to remit cash. In the instant case only an amount of Rs.25-10 ps. was found as excess cash in the possession of the conductor, which was explained by him as the amount that was not collector by the passengers, who were to be paid 'change dues' totalling Rs.25-10 ps. and the explanation appears to be plausible.

14. It is obvious from the record that the management acted hastily removing the petitioner from his service without waiting for the reply to the show cause notice of removal dated 25-1-94 and which was not duly served upon the petitioner. The removal orders are passed 15 days after the issue of the show cause notice of removal without obtaining any explanation from the petitioner to the said show cause notice."

Having recorded categorical findings both on the issue of

non-service of show cause notice and the conduct of the petitioner, the first respondent modified the punishment inflicted on the petitioner as already indicated above. This order of the Tribunal, in my view, is not legal and sound. If the petitioner was not served with the show cause notice, the whole proceedings culminating in the imposition of punishment on him get vitiated on account of violation of the principles of natural justice. Therefore, the punishment inflicted on the petitioner cannot be sustained at all. When once a finding is rendered that the petitioner was not afforded an opportunity of showing cause, the question of Tribunal going into the merits of the case and modifying the punishment, in my view, should not arise. On the basis of the finding given by the Tribunal that the petitioner was not afforded an opportunity before passing the final orders, it ought to have remitted the matter back to the disciplinary authority to consider the case of the petitioner afresh after affording him an opportunity. I am therefore of the view that award of the first respondent Tribunal in modifying the punishment inflicted on the petitioner and orders of respondents No.2, 3 and 4 also cannot be sustained. To this extent, the award is set aside. The matter is remitted to respondent No.2 to consider the case of the petitioner afresh after serving a show cause notice on him and giving him a reasonable opportunity to putforth his case.

The writ petition is disposed of accordingly as indicated above. No costs.

C.V.NAGARJUNA REDDY, J

18-4-2007

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